IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 628 OF 2000

Ravi Ochhu Tyanwar.]
Convict Prisoner No.C-11222,]
Yerawada Central Prison, Pune] .. Appellant (Ori. Accused.)

Versus

The State of Maharashtra,] .. Respondents

Mr. A.S. Sarpande, Advocate for the appellant/accused.

Mrs. U.V. Kejriwal, A.P.P. for the respondent-State.

CORAM: V.G. PALSHIKAR &
ANOOP V. MOHTA, JJ.

DATED: 10TH SEPTEMBER, 2004.

ORAL JUDGMENT: *[Per Anoop V. Mohta, J.]*

1. The appellant-accused has assaulted his wife, minor son and daughter and two servants. Therefore, the Additional Sessions Judge, Raigad,

after considering the material, as well as, the extra judicial statement made by the appellant, convicted him for the offence punishable under Section 302 of Indian Penal Code and sentenced him to suffer life imprisonment. The appellant was also convicted for the offence punishable under Section 307 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for 7 years and related orders were passed by the judgment dated 16th March, 2000. The accused has, therefore, appealed against the order of conviction.

2. One Kashimayan Ochhu Tyanwar (PW1) brother of the accused to whom the extra-judicial confession was made by the appellant, had lodged the FIR (Exhibit-8) on 26/12/1997. As per his narration, on 25/12/1997, at about 1.30 a.m., he heard noise and cries outside and, therefore, he came out of his house/room and saw that one servant was running away from the porch where the servants were sleeping. He chased him. However, the said servant disappeared. Therefore, the complainant returned back immediately. He saw that the appellant-accused was standing in his room, holding a blood stained sickle in his hand. The door of the room was open and the light in the room was on. There was a wooden box near the door lying outside the room of the accused. He lifted that box and threw it towards the accused and snatched the sickle from the accused. He had also noticed that their servants were injured

and were crying. The son of the accused was also seriously injured on the head. As the said son was alive, the complainant took him out of the house. He saw that the daughter of the accused was also injured. One servant Perikarpan @ Raju (PW4) had also sustained injuries on his head. Another servant, Vijay Gajanan Vartak (PW3) had sustained sickle blows on his shoulders, as well as, on his head. The third servant Singham had also sustained injury on his thigh. All these injuries were caused by the sickle. The complainant, therefore, after throwing the box, managed to get hold of the accused and took him out of the room and tied him with a rope. On enquiry, the appellant-accused told him that his wife had illicit relation with their servant Raju and, therefore, he killed her. He further told that, as enquired, he killed the children as he apprehended that they would also follow the path of their mother and would lead immoral life. He further told that he assaulted Raju as he had illicit relation with his wife. He assaulted Vijay, another servant, as he used to help Raju in keeping illicit relations. Accused further told that he assaulted Singham as he was intervening while he was assaulting Raju and Vijay. The complainant further narrated that after 5-10 minutes Sagar, the minor son of the accused also expired. The complainant, therefore, requested the neighbour Gopal Sawant to go and inform the Police Patil, so that Police Patil, in turn, could inform to the Mandva Police Station. Accordingly, the Police came to the spot of the incident. The Police arrested the

accused and took the injured to the hospital. The complainant thereafter went to the Police Station and narrated the incident, which was reduced into writing (Exhibit-8) and duly signed. The complainant was also sent for treatment as he also suffered bleeding injuries while snatching the sickle from the accused. All other injured were taken to the hospital. The injured daughter of the accused is alive and she staying with the complainant. She was also treated in the Civil Hospital, Alibaug. As narrated, at the relevant time, their servants Raju, Vijay, Singham, Mani Palle, Surli Pille were also present in the porch. The brother in law of the accused Mr. Chandir was also sleeping there. The dead body of the deceased wife and son of the accused were handed over to them in the evening. The Police came to the house at Rewas. The Spot Panchanama was drawn. The sickle was also recovered from the house of the accused, after due Panchanama (article No.1).

3. The prosecution has examined, in all, 14 witnesses. The complainant-informant Kashimayan Ochhu Tyanwar (PW1) had lodged the FIR at Exhibit-8. PW3 Vijay is a Panch witness to Exhibit-15 i.e. the Panchanama of Pants and shirt of the accused with blood stains and the clothes of the deceased. PW4 Perekarppan @ Raju Mani Tyanwar who was residing at Rewas and working with the informant PW1, supported the basic testimony of PW1. This

witness has also suffered injuries. PW5-Vijay was also working with the complainant and the accused. He is also an injured witness, but he has not supported the case of the prosecution fully and was, therefore, declared hostile. He had run away from the place. PW6 Dnyaneshwar is a Panch witness to the Spot Panchanama (Exhibit-25) and to the Inquest Panchanama of the dead body (Exhibit-26). PW 7 Ravikant Tukaram Patil is an another Panch witness to the dead body, sickle (article 1) with blood stains, sample of earth. He had also signed along with the other Pancha Chandrakant Patil (Exhibit-28). PW8 Dattaram Janu Bhadenkar, a witness to the Panchanama was also declared hostile. He was a Panch witness to the Panchanama in respect of the clothes of Rekha and Vijay. PW 9 Balnath Sadashiv Mhatre is another Panch witness in respect of the stone which was used for sharpening the sickle. He was also declared hostile. PW10 Dr. Ajay Madhav Godse is a Medical Officer attached to the Primary Health Centre, Pochambe, Taluka Alibaug and who had conducted the Post Mortem (Exhibit-34). This witness proved the cause of death and the injuries of the deceased Chandei Rani. This witness has also proved the cause of death because of haemmorhagic shock due to cut of major vessels of neck eg. carotid arteries and such that injuries such injuries could be possible by the weapon i.e. article 1. This witness has proved the head injuries of Sagar (Exhibit-34) and also proved the cause of death of Sagar due to intra cranial

bleeding due to fracture assault over base of skull because of the said injury as reported and further proved that it could be caused by article 1 – sickle. PW11 Dr. Ajit Eknath Gavli, examined the complainant Kashimayan (Exhibit-37) and opined that such injury could be caused while snatching away the sickle from any other person. He had also examined the accused. The blood samples were also taken, which were sent to the Chemical Analyzer (Exhibit-38). PW12 Tarabai Chandrakant Patil is a neighbour who was declared hostile and who had made a statement to the Police that she had seen the accused assaulting his wife, children and servants with a sickle. PW13 Dr. Anil Shivling Phutane who had examined Rekha Tyanwar, Singham Tyanwar, Vijay and Raju on 26th December, 1997 itself. This witness has proved the various injuries on the above witnesses and injured persons. PW14 Noor Mohamad Abdul Reheman Khan, the PSI of Police Station, Pen, who was attached to Alibaug Police Station on 26th December, 1997. This witness had recorded the incident, which was reduced into writing being FIR (Exhibit-8) in question. This witness also noticed that the accused was tied by a rope. This witness also substantiated the case of the prosecution in respect of the Inquest Panchanama (Exhibits 25 & 26), Spot Panchanama (Exhibit-28), clothes of the accused (Exhibit-15) and Exhibits 53 to 68 which include Chemical Analyzer' sReport etc. All these witnesses, except those declared hostile (PW5, PW8 & PW12), substantially proved the case of the

prosecution. No witness was examined by the accused. There is no eye witness in this matter.

4. The learned Additional Sessions Judge, after considering the above material, as well as, the extra-judicial confession made by the accused, held that the deceased Chandei Rani and Sagar died homicidal death. The accused committed these two murders. The accused had also attempted to kill injured Raju and Vijay, his daughter Rekha and caused them injuries with the sickle and, therefore, held him guilty of the offence punishable under Section 302 read with Section 307 of the IPC and accordingly, sentenced him to life imprisonment and also ordered that the sentences would run concurrently.

5. We have heard the parties and gone through the evidence, as well as, the material placed on the record. We have re-appreciated and re-weighed the testimony and the material placed on the record, including the reasoning given by the learned Additional Sessions Judge. After due deliberation on all aspects, we are of the view that the sentence, as awarded, need no interference as the same is within the framework of law, as well as, of the record.

6. First and foremost point for consideration in the present case is

whether the conviction in question can be based purely on the extra-judicial confession in question. The relevant law so far as an "extra judicial confession" is well settled. The Apex Court in *Kavita Vs. Tamil Nadu* **AIR 1980, S.C., 247** observed that "*Extra judicial confession is a weak piece of evidence.*" "*Though conviction can be based on extra-judicial confession, but its value must be established by veracity of the witness to whom it was made.*" Therefore, if a case is made out, there is no bar of convicting an accused on the basis of an extra-judicial confession. In the present case, PW1-complainant Kashimayan is the brother of the accused. Their relations were normal and they were doing their business with the help of the common servants. There is no case made out of any dispute or enmity between them even in the elaborate cross-examination. There is no further material on the record to show that there was any reason to involve the appellant falsely. The credibility of this complainant-PW1 is difficult to overlook. The other cogent evidence corroborates the case of the prosecution. PW1, through FIR (Exhibit-8) which was lodged immediately, narrated the confession of the accused. This extra-judicial confession from the record, appears to be voluntary, reliable, unbiased and trustworthy. Such extra-judicial confession can be used as other evidence and it need not be independently corroborated in all the cases.

7. The motive, as narrated by PW1 and as confessed by the accused, is about was because of illicit relation of the deceased wife with the servant Raju, cannot be overlooked, specially when the accused confessed that he had seen the same. The accused further stated that he had killed his children as he apprehended that they might lead such immoral life like their mother. The accused further narrated that he attempted to kill the others because they were helping the said Raju to have an illicit relation with his wife.

8. In view of the fact that the accused was last seen with the deceased, as supported by PW4 and 5, is also a relevant factor against the accused. As the story goes, the accused was found near the dead body of the deceased wife and injured son and daughter with blood stained sickle in his hand, as well as, blood stained clothes, will definitely link the circumstances against the accused. The other linking circumstances further support the case of the prosecution, which includes the various injuries caused by the sickle (article 1) on the deceased wife and son of the accused. This also supports the various injuries caused by the accused with the sickle on the other witnesses. The medical evidence, as referred above, further supports the cause of death and the injuries. This supporting witnesses, specially PW1, and the Medical Officers i.e. (PW10) Dr. Ajay Madhav Godse, (PW11) Dr. Ajit Eknath Gavli and (PW13) Dr. Anil

Shivling Phutane, apart from the Chemical Analyzer's report proved the prosecution case, and this material and evidence points out the guilty mind and the guilt of the accused.

9. In the present case, merely because three witnesses (PW5, PW8 and PW12) were declared hostile, that itself cannot be the reason to overlook and discard the case of the prosecution, which is based on the extra-judicial confession as referred above. The other witnesses further proved the scene and the place of the incident. The further fact that the accused, as well as, the complainant were sleeping in the same premises, but in two separate rooms. The servants were sleeping in the porch. Even though there is no eye witness, PW1 saw that the accused was standing with a sickle in his hand and the bodies of his wife and children were lying there. The son was alive for 5 to 10 minutes and he died later on because of the head injury. The daughter, who had also suffered injury caused by the accused, however, survived. The blood stained sickle was found from the house of the accused. The light in the room was on when the complainant saw the accused in the room. The complainant also suffered injury while snatching the sickle from the hands of the accused. The injuries, as proved, on the neck of the deceased wife also supports the prosecution case. The injury on the head of the minor son Sagar, also supports

the same. The blood stains and clothes found on it and on the earth and in the room also support the case of the prosecution. The blood group found on the sickle also matches with the blood group of the deceased and the injured. Even though there is a justification given by the learned Additional Sessions Judge so far as not finding blood group of the deceased wife on the sickle, by that itself would not mean that the other circumstances and the extra-judicial confession can be overlooked. The injuries on the person of the other servants also support the case of the prosecution and basically it matches with the extra-judicial confession made by the accused. Those injuries and the testimony of those witnesses, even though have supported to some extent only, that itself cannot be the reason to interfere with the reasoning given by the learned Additional Sessions Judge. The recovery of the sickle is also relevant piece of evidence. The Panchanama of the stone on which the accused used to sharpen his sickle, even if not proved by the Panch, the said Panch being declared hostile, that cannot affect the other evidence proved by the prosecution.

10. All these events, including injuries to four others, pin-point that the accused had a definite intention to kill his wife and children and/or attempt to kill others and knew the consequences of such the action, recklessly assaulted all as referred above and which resulted into the death of the appellant' swife and son,

apart from serious injuries to others. Fortunately, the daughter is still alive. The reckless attack or assault by the accused on the others further reflects his intention, even though sparked because of knowledge of alleged illicit relation of his wife, that itself is not sufficient to mitigate the offence as committed. There are no mitigating circumstances placed or pointed out on the record.

11. Considering the settled principle of law and the medical evidence placed on the record, which reflects the nature of the injuries and result of the said assault caused by the appellant and as confessed by him, the same is sufficient to dismiss the Appeal and to confirm the sentence, as imposed. The facts and circumstances of the case are sufficient to maintain the impugned order passed by the Additional Sessions Judge, Raigad, dated 16th March, 2000. There is no merit in the Appeal.

12. For the above reasons, the Appeal is dismissed. The conviction is confirmed.

[V.G. PALSHIKAR, J.]

[ANOOP V. MOHTA, J.]